

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

PARENT ON BEHALF OF STUDENT,

v.

LOS ANGELES UNIFIED SCHOOL
DISTRICT.

OAH CASE NO. 2013010224

ORDER DENYING MOTION FOR
STAY PUT

On February 6, 2013, Student filed a motion for stay put. Los Angeles Unified School District (District) did not file an opposition to the motion. Student included a proof of service in her motion which contains a declaration under penalty of perjury that her motion for stay put was served upon District.

APPLICABLE LAW

Until due process hearing procedures are complete, a special education student is entitled to remain in his or her current educational placement, unless the parties agree otherwise. (20 U.S.C. § 1415(j); 34 C.F.R. § 300.518(a) (2006). Ed. Code, § 56505 subd. (d).) This is referred to as “stay put.” For purposes of stay put, the current educational placement is typically the placement called for in the student's individualized education program (IEP), which has been implemented prior to the dispute arising. (*Thomas v. Cincinnati Bd. of Educ.* (6th Cir. 1990) 918 F.2d 618, 625.)

In California, “specific educational placement” is defined as “that unique combination of facilities, personnel, location or equipment necessary to provide instructional services to an individual with exceptional needs,” as specified in the IEP. (Cal. Code Regs., tit. 5, § 3042.)

DISCUSSION

Student filed a due process complaint on January 9, 2013, alleging, in general, District failed to provide and offer FAPE from March 2011 until present. Student has been attending Marina Del Ray Middle School (Marina) for the 2012-2013 school year. Her home school is Johnnie Cochran Middle School (Cochran). Student's last agreed and implemented IEP is dated October 24, 2012, which specified that Student's placement is at Marina in the ED program for 1060 minutes per week.

On January 25, 2013, Student was suspended subsequent to a physical altercation with another student. Student was suspended for two days, January 29-30, 2013. On Thursday, January 31, 2013, Student was refused entrance to her classroom and told that she was no longer welcome at Marina and she would be required to attend her home school, Cochran.

The District held an IEP meeting on January 31, 2013, changing the placement offer from Marina to Cochran. The parent did not agree with the placement change and did not sign that IEP in agreement with the placement change. Student states in her brief that her attorney's office spoke to the Principal at Marina on February 5, 2013, who stated Student may return to Marina.

Student is entitled to remain in her last agreed upon and implemented placement while a dispute is pending and an order for stay put is generally not required unless a dispute over placement exists. Here, Student has not alleged whether a dispute exists as to Student's placement and services while the dispute is pending. While the facts as student pled them indicate Student may have been kept out of Marina for some period of time, Student acknowledges that as of February 5, 2013, student was allowed to return to Marina. If there is a dispute that exists as to that placement, Student may file a request for stay put with more specificity. The motion for stay put is denied.

ORDER

The Motion for Stay Put is denied.

Dated: February 14, 2013

/s/

MARGARET BROUSSARD
Administrative Law Judge
Office of Administrative Hearings